IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

Bail Appl..No. 4669 of 2007

(CRIME NO. 45/07 OF KAKKUR POLICE STATION)
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PETITIONER/1ST ACCUSED:

M.K.SASIDHARAN NAIR,
NADUVALLUR AMSOM,DESOM,
KOZHIKODE.

BY ADV. SRI.T.G.RAJENDRAN.

RESPONDENTS/COMPLAINANT/STATE:
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1. **THE SUB INSPECTOR OF POLICE,**
   KAKKUR POLICE STATION, KOZHIKODE.

2. **STATE REP; BY PUBLIC PROSECUTOR,**
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07/08/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 4669 OF 2007

Dated this the 7th day of August, 2007

ORDER

Application for anticipatory bail. The petitioner was the Manager of the de facto complainant. The de facto complainant filed a complaint alleging the commission of offences punishable, inter alia, under Secs.465 and 471 of the IPC. The crux of the allegations is that the de facto complainant had entered into an agreement for purchase of land with one Nalini Damodaran – the owner of the property. The petitioner – the Manager of the de facto complainant, was a witness to that agreement. 12.33 Acres of the said property had to be surrendered by the said Nalini Damodaran under the land ceiling proceedings. A sale deed was executed by the said Nalini Damodaran in favour of the de facto complainant. Thus, the de facto complainant is the owner of the property, entitled to possession of the same. But the de facto

complainant realised that the land tax in respect of the property was being remitted in the name of the office bearers of a Trust by name “Sree Narayana Dharma Vichara Trust”. The said Trust, in turn, claimed rights under the petitioner herein. The petitioner, in turn, claimed that there was an oral lease of the property in his favour. The de facto complainant found that the petitioner had obtained possession certificates and tax receipts etc., falsely claiming the property to be his and from him to his transferees. The de facto complainant allegedly made applications before the Revenue authorities and ensured that the tax was received in his name also. He complained to the police about the alleged machination of the petitioner who though he was the Manager of the de facto complainant had brought into existence the forged false documents to enable others to claim rights over the property. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. There is a dispute regarding the identity of the property. In any view of the matter, it is a pure and simple civil dispute and no elements of the offence of cheating or forgery are involved. At any rate, it would be unjust

and unfair to compel the petitioner to undergo the undeserved trauma of arrest and detention merely on account of such civil dispute, it is submitted.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the petitioner is not as innocent as he feigns. With full knowledge of the fact that his principal had purchased the property from Nalini Damodaran - the former owner, the petitioner has brought into existence documents to sustain a claim for himself and through him others. To perpetrate this fraud, he has made use of the services of the Revenue officials who are also co-accused.

4. Having considered all the relevant inputs, I am satisfied that notwithstanding the opposition by the learned Public Prosecutor, this is a case in which discretions under Sec.438 of the Cr.P.C. can and ought to be invoked in favour of the petitioner. In coming to this conclusion, I take note of the dimensions of the dispute. Whether the Revenue officials have colluded to create false documents etc., need not be gone into in detail in this petition. I need only observe that I am satisfied that anticipatory bail can be granted to the petitioner

subject, of course, to appropriate conditions which shall adequately protect and safeguard the interests of a fair, efficient and expeditious investigation.

5. In the result, this petition is allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioner shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 14/8/07. He shall be released on regular bail on his executing a bond for Rs.25,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 16/8/07 and 17/8/07 and thereafter on all Mondays and Fridays between 10 a.m. and 12 noon for a period of three months. Subsequently, he shall so make himself available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as

if these directions were not issued at all;

(iv) If the petitioner were arrested prior to his surrender on 14/8/07 as directed in clause (i) above, he shall be released on his executing a bond for Rs.25,000/- without any sureties undertaking to appear before the learned Magistrate on 14/8/07.

Sd/-
(R. BASANT, JUDGE)

Nan/

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P.S. to Judge